



PATENT
2344-1-001CON

#6
163
3/10/03

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT(S) : Sven Mardh EXAMINER : Shin Lin CHEN
SERIAL NO. : 09/927,420 ART UNIT : 1632
FILED : August 10, 2001
FOR : RECOMBINANT PHAGES

CERTIFICATE OF MAILING UNDER 37 CFR 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the ASSISTANT COMMISSIONER FOR PATENTS, WASHINGTON, DC 20231 on February 28, 2003.

David A. Jackson, Reg. #26,742
(Name of Registered Representative)

Lies A. Shure 2/28/03
(Signature and Date)

RECEIVED
MAR 10 2003
TECH CENTER 1600/2900

RESPONSE TO RESTRICTION REQUIREMENT
UNDER 35 U.S.C. §121

ASSISTANT COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

Dear Sir:

This is in response to a Requirement for Restriction mailed January 29, 2003, requiring Applicant to elect between the following groups of claims for further prosecution:

Group I - Claims 1-13, drawn to a modified bacteriophage for use in the treatment or prophylaxis of a bacterial infection, a pharmaceutical composition comprising said bacteriophage, and a method for treatment of a bacterial infection in a mammal by using said bacteriophage, classified in class 424, subclass 93.6.

Group II - Claim 14, drawn to use of a bacteriophage in the manufacture of a medicament for the treatment or prophylaxis of a mucosal bacterial infection, classified in class 435, subclass 235.1

Group III - Claims 15 and 16, drawn to a hybridoma and a monoclonal antibody, classifiable in classes 424 and 435, subclass 141.1 and 449, respectively.

In accordance with 35 U.S.C. §121, Applicant hereby elects to prosecute the claims of Group I, Claims 1-13, with traversal.

Under 35 U.S.C. §121 "two or more independent and distinct inventions ... in one application may ... be restricted to one of the inventions." Inventions are "'independent'" if "there is no disclosed relationship between the two or more subjects disclosed" (MPEP 802.01). The term "'distinct'" means that "two or more subjects as disclosed are related ... but are capable of separate manufacture, use or sale as claimed, and are patentable over each other" (MPEP 802.01). However, even with patentably distinct inventions, restriction is not required unless one of the following reasons appear (MPEP 808.02):

1. Separate classification
2. Separate status in the art; or
3. Different field of search.

Under Patent Office examining procedures, "If the search and examination of an entire application can be made without serious burden, the Examiner is encouraged to examine it on the merits, even though it includes claims to distinct or independent inventions" (MPEP 803, Rev. 8, May 1988).

Specifically, the search for the preparation of the medicament of Group II would involve a search of literature relevant to the bacteriophage of Group I. Thus, an economy of examination would be served by the conjoint examination of the claims of both groups.

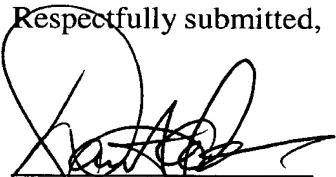
Attorney Docket No. 2344-1-001 CON

For this reason, Applicants traverse the outstanding requirement and request its withdrawal.

For the above reasons, Applicants request withdrawal of the Requirement for
Restriction, and early action on the merits as to all of the claims presently pending in the case.

In view of the above, early action on the merits is courteously solicited.

Respectfully submitted,



DAVID A. JACKSON
Attorney for Applicant
Registration No. 26,742

KLAUBER & JACKSON
411 Hackensack Avenue
Hackensack, NJ 07601
(201) 487-5800